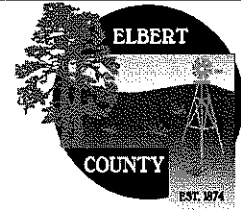


COUNTY OF ELBERT

COMMUNITY & DEVELOPMENT SERVICES OFFICE

P.O. BOX 7
215 COMANCHE STREET
KIOWA, COLORADO 80117
303-621-3136 FAX: 303-621-3165



TO: The Board of County Commissioners

FROM: Richard L. Miller, AICP
Director – Community & Development Services Office

DATE: April 13, 2011 (1st Reading)

RE: Ordinance No. 11-01 – An Ordinance Regarding the Accumulation and Removal of Rubbish, Nuisances, and Junked/Inoperable Motor Vehicles in Elbert County, Colorado

Dear Commissioners:

Attached is a copy of the proposed "Rubbish Ordinance" for Elbert County. Since most regulations in Elbert County are approved by "resolution"; I wanted to outline the approval process for an "ordinance".

The County Attorney has advised that pursuant to C.R.S. § 30-15-401, et seq., "ordinances" must be read and approved at a first reading before the Board of County Commissioners (public comment not required), prior to publication of the ordinance for at least ten (10) days. Once published, the Board of County Commissioners may approve and adopt the ordinance at a second and final reading (public comment is required).

The first reading of this proposed "Rubbish Ordinance" will be presented to you at the April 13th, 2011, Board of County Commissioner Public Hearing. If the Board approves the "Rubbish Ordinance" at the first reading, Community & Development Services will publish the ordinance for two (2) consecutive weeks in the Elbert County News, and set a date for the second reading before the Board. Currently, the date for the second reading of the "Rubbish Ordinance" has been tentatively set for May 11th, 2011.

We look forward to presenting this important ordinance to you on April 13th.

Sincerely,

Richard L. Miller

Richard L. Miller, AICP
Director – Community & Development Services Office

STATE OF COLORADO }
 }ss
COUNTY OF ELBERT }

At a regular meeting of the Board of County Commissioners for Elbert County, State of Colorado, held at the Courthouse in Kiowa on Wednesday, the ____ day of _____ A.D. 2011, there were present:

Del Schwab	Commissioner Chairman
John Shipper	Commissioner
Kurt Schlegel	Commissioner
Deidre Delaney	Deputy, Clerk to the Board

When the following proceedings, among other, were had and done, to wit:

ORDINANCE NO. 11-01

**AN ORDINANCE REGARDING THE ACCUMULATION AND REMOVAL OF
RUBBISH, NUISANCES, AND JUNKED/INOPERABLE MOTOR VEHICLES
IN ELBERT COUNTY**

WHEREAS, pursuant to section 30-15-401, C.R.S., as amended, the Board of County Commissioners of Elbert County, Colorado (hereinafter the "Board"), has the general enabling power to adopt ordinances for the control or licensing of those matters of purely local concern, and do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease; and

WHEREAS, residents of Elbert County experience problems with the accumulation of rubbish and junked/inoperable motor vehicles upon adjacent or nearby properties; and

WHEREAS, it is the opinion of the Board that in order to preserve the public health, safety and welfare of the citizens of Elbert County, the Board should take the following action.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of the County of Elbert, as follows:

Section 1. Purpose.

1.1 The purpose of this Ordinance is to protect the public health, safety and welfare of the citizens and residents of Elbert County, Colorado, by eliminating and controlling, to the extent possible, the accumulation of rubbish and junked/inoperable motor vehicles within the County, which if not eliminated or controlled, can result in visual blight; "attractive nuisances";

incompatibility with existing land uses; hazardous or toxic substances being deposited in unapproved sites; attraction of disease-infested rodents and other vermin; air, land, water, and noise pollution; and fire and other hazards.

Section 2. Authority/Effect Date.

2.1 This Ordinance is authorized pursuant to among other things, section 30-15-401, C.R.S., as amended. This Ordinance takes effect and is in force from and after its adoption by the Board and thirty (30) days after the second publication.

Section 3. Applicability.

3.1 This Ordinance shall apply throughout the unincorporated area of Elbert County, including public and state lands.

3.2 This Ordinance shall apply within the corporate limits of any incorporated town or city within Elbert County which elects by appropriate ordinance or resolution to have the provisions and enforcement of this Ordinance apply therein, and upon which an intergovernmental agreement between Elbert County and such incorporated town or city has been entered into relating thereto.

Section 4. Definitions.

4.1 Agricultural Land. Any parcel of land, presently and for at least two (2) years prior to any alleged violation of this Ordinance, that has been continually used for the primary purpose of obtaining monetary profit as a farm or ranch or forest land, as defined and subject to the restrictions contained in section 39-1-102 (1.6), C.R.S.

4.2 Board. The Board of County Commissioners of Elbert County, Colorado.

4.3 Commercial Enterprise. Any use involving the sale, rental, or distribution of goods, services, or commodities (excluding agricultural uses). To qualify hereunder, a commercial enterprise must be located on property properly zoned for such use and taxed by the Elbert County Assessor as commercial and the operator shall have a valid sales tax license issued by the State of Colorado.

4.4 County. The unincorporated areas of Elbert County, including public and state lands, and the incorporated limits of any town or city within Elbert County which elects by appropriate ordinance or resolution to have the provisions and enforcement of this Ordinance apply therein and upon which an intergovernmental agreement between Elbert County and such incorporated town or city has been entered into relating thereto.

4.5 Habitable. The condition of a mobile home/recreational vehicle in which inhabitants can live free of serious defects that might harm health and safety.

4.6 Industrial Tract. A lot, parcel or tract of land zoned for such use and classified by the Elbert County Assessor's Office as industrial.

4.7 Junked/Inoperable Motor Vehicle. Shall be construed to mean any motor vehicle which:

- (a) Does not bear current and valid license plates and which the owner or possessor thereof cannot establish as being capable to travel under its own power in its existing condition; or
- (b) Is not capable to travel under its own power in its existing condition; or
- (c) Is substantially wrecked, demolished, or dismantled as to be inoperable.

“Travel under its own power” is defined as the vehicle being able to start, stop, drive forward, and drive backward, with all tires inflated.

4.8 Mobile Home. A transportable structure originally designed for year-round residential or business purposes and having, or designed to have, water, electrical, and sewerage connections similar to those of conventional dwellings, not meeting the specification required for a recreational vehicle. For purposes of this Ordinance, this definition does not apply to units that have been determined by the Code Enforcement Office, or his/her designee, to have been built prior to June 15, 1976.

4.9 Owner. The owner of record, whether person, partnership, firm, corporation, governmental agency, or other association of persons, any authorized agent or representative of the owner of record, or any occupant of the premises.

4.10 Recreational Vehicle. Any building, structure or vehicle designed or used for living or sleeping and equipped with wheels to facilitate movement from place to place, and any automobile used for living or sleeping purposes, including, but not limited to, pick-up coaches (campers), motorized homes, boats, travel trailers and camping trailers not meeting the specification required for a manufactured or mobile home.

4.11 Rubbish. Rubbish, as used herein, shall include only junk, which for purposes of this Ordinance shall be defined as:

(a) Outside storage of used tires (except as otherwise regulated pursuant to the Solid Wastes Disposal Sites and Facilities Act, Part I of Article 20 of Title 30, C.R.S., and any rules and regulations promulgated therein).

(b) Junk vehicle or junk recreational vehicle, defined as a vehicle that is inoperable or missing parts so that it is not maintained for driving and which by virtue of its condition cannot be or is not restored to an operable condition within ninety (90) days from the date of the rubbish complaint, but not including vehicle which is stored within a completely enclosed building.

(c) Junk mobile home that is in a condition that presents a substantial danger or hazard to public health, safety, or welfare as determined by the public Health Officer, which is unused by the owner, which is uninhabited because of deterioration or decay, which condition constitutes a fire hazard as determined by the Fire Marshal/Building Official, or subjects

adjoining property to danger or damage by storm, soil erosion, or rodent infestation as determined by the Building Official, or which becomes a place frequented by trespassers and transients seeking temporary hideout or shelter.

(d) Worn out or discarded articles or material, e.g. bottles, glass, cans, scrap metal, used/worn out vehicle parts, rubber, tires, disposable packages or containers, paper, cardboard, furniture, carpet, construction debris, appliances and any combination thereof, disposed of on the ground and not stored within a completely enclosed building or completely screened enclosure. This material is not permitted to be stored in an abandoned or junk mobile home, recreation vehicle or vehicle.

4.12 Salvage Junk Yard. Any lot, site, building, or structure used primarily for any or all of the following purposes:

(a) The collection, storage, keeping for sale, exchange or abandonment any junk, regardless of source or value.

(b) The collection, storage, keeping for sale, exchange or abandonment metal parts, scrap metals or other scrap material, regardless of source or value.

(c) The collection, storage or keeping for sale, exchange or abandonment of two (2) or more automobiles or motorized vehicles or parts thereof, or any motorized machinery or parts thereof.

Salvage junkyard does not include the storage of implements of husbandry, farm tractors, farm and ranch equipment or vehicles customarily operated in a farm or ranch operation on "Agricultural Land", as defined in Section 4.1.

4.13 Screen, Screened, or Screening. A method of visually shielding or obscuring rubbish, as defined in this section, by permanent construction and maintenance of six (6) foot high solid fences, earth berms or the use of densely planted landscaping materials to lessen the visual impacts on surrounding properties and roads. Fences (including gates) shall be constructed of materials and colors that blend with the surrounding landscape and whose vertical surface is covered by a solid or opaque material through which no complete visual images can be seen. Plastic, cloth, fiberglass sheets, or any like material that will deteriorate over time is not permitted as screening material.

4.14 Vehicle. Every device in, upon, or by which any person or property is or may be transported upon a road or highway, except bicycles.

Section 5. Unlawful Acts.

5.1 It shall be unlawful for any owner to cause or allow the accumulation of rubbish on any lot, parcel, or tract of land in the County under such owner's control, possession, or ownership, or upon any County road or right-of-way, private road, alley, or sidewalk adjacent to such lot or tract of land.

5.2 It shall be unlawful for any person to dump or dispose of rubbish in the County

except in those places permitted and/or duly authorized by the Board for such purpose.

5.3 It shall be unlawful for any person to fail or refuse to comply with any Notice and Order issued pursuant to this Ordinance.

Section 6. Complaints.

6.1 Any person may file a complaint that a property in Elbert County is in violation of this Ordinance. Additionally, complaints may be filed by the Elbert County Code Enforcement Office, County employees and elected officials of the County.

6.2 Complaints must be in writing on a form provided by the Elbert County Community & Developments Services Office. The County shall not be obligated to investigate anonymous complaints or complaints that are not filed in writing.

6.3 Complaints shall be filed in the Elbert County Community & Development Services Office, 215 Comanche Street, Kiowa, Colorado for processing.

Section 7. Notice and Order for Removal of Rubbish.

7.1 In the event that rubbish accumulates on any lot, parcel, or tract of land in the County, or upon any County road or right-of-way, alley, or sidewalk adjacent to such lot, parcel, or tract of land, and a complaint is filed in writing pursuant to Section 6 such complaint shall be forwarded to the Enforcement Officer, who will conduct an investigation of the site to determine if an unlawful condition does exist. In the event that the Enforcement Officer determines that an unlawful condition does exist, a Notice and Order shall be issued to the owner requiring the owner to:

(a) Remove such rubbish within twenty (20) days from the date of said Notice and Order; or

(b) Enter into an agreement to mitigate the accumulation of the rubbish as described in Section 7.2; or

(c) Request to appear before the Board of County Commissioners within said twenty (20) days to show cause why such Notice and Order should not be enforced.

7.2 Should the owner desire to enter into an agreement to mitigate the accumulation of the rubbish such owner shall immediately notify the Enforcement Officer and the parties shall enter into negotiations towards a mitigation agreement. Mitigation includes, but is not limited to, a phased and/or timed removal plan and screening; however such agreement shall not be for a period to exceed ninety (90) days. During such times as the negotiations are taking place, the twenty (20) days for removal described in 7.1 shall be stayed. All agreements are subject to the final approval of the Board. If the Enforcement Officer determines that the negotiations have been unsuccessful, a written notice shall be issued to the owner and to the Board requiring that the owner remove the rubbish at issue within twenty (20) days. Negotiations not successfully concluded within thirty (30) days shall be deemed unsuccessful.

7.3 A Notice and Order shall be deemed issued by placing the same in the U.S. Mail, certified, return receipt requested, to the owner's last known address as indicated on the County's assessment roll. Service shall be complete upon mailing or personal service in the same manner provided in Rule 304 of the Colorado Rules of County Court Civil Procedure. If the Enforcement Officer is unable to locate the owner for personal service or service via U.S. Mail, after reasonable efforts, the Notice and Order may be published in such a manner as is in accordance with Rule 304 of the Colorado Rules of County Court Civil Procedure concerning publication, except that said publication shall be for a period of ten (10) days, and the Notice and Order shall be posted in a conspicuous place at or on the subject property.

Section 8. Show Cause Hearing.

8.1 Within twenty (20) days of the date of the Notice and Order issued under Section 7 above, the owner may request and shall be granted a show cause hearing before the Board. No less than seven (7) days prior to the date of the show cause hearing, notice of the time, date and place of the hearing shall be placed in the U.S. Mail, postage prepaid, to the owner and any other party who has expressed an interest in this matter, including the complainant. The owner shall have a full and fair opportunity to present any relevant evidence or witnesses to the Board in order to establish why the Notice and Order should not be enforced or delayed in its enforcement. Any other interested party shall have the same opportunity to present evidence or witnesses. The Board shall consider all such evidence and testimony, along with any presentation made by the County staff or other governmental agency, in reaching its decision in accordance with this Ordinance. Upon the request for the hearing, and pending the Board's decision, the removal order shall be stayed.

Section 9. Removal of Rubbish by County: Assessment of Costs; Collection.

9.1 If the owner fails or refuses to remove such rubbish within twenty (20) days from the date of the Notice and Order issued in accordance with Section 7.1, from the notice that negotiations were unsuccessful under Section 7.2, or from the decision of the Board pursuant to Section 8.1, the Board shall have the authority to remove or cause to be removed, such rubbish, either by and through County forces, contract, or otherwise, and assess the reasonable cost thereof, including five percent (5%) for inspection and other incidental costs in connection therewith upon the lots and tracts from which such rubbish has been removed.

9.2 Any assessment prescribed in Section 9.1 which is not paid within ninety (90) days from the date of the mailing of an invoice may be certified by the Elbert County Clerk and Recorder to the Elbert County Treasurer, who shall collect such assessment, together with a ten (10) percent penalty for the cost of collection, in the same manner as other taxes are collected. The laws of the State of Colorado for assessment and collection of general taxes, including the laws for the sale and redemption of property for taxes, shall govern and apply to the collection of assessments pursuant to this Section 9.

9.3 Any assessment pursuant to Section 9.1 shall be a lien against such lot, parcel, or tract of land until paid and shall have priority over all other liens except general taxes and prior special assessments.

Section 10. Emergency Order.

10.1 Whenever the Board or the Health Officer deems that an emergency exists which requires immediate action to protect the public health, safety or welfare, the Board may, upon finding that such emergency exists and without prior notice or hearing, issue an Order stating that such emergency exists and requiring that such action be taken as deemed necessary to meet the emergency. Notwithstanding any provisions of this Ordinance to the contrary, such Order shall be effective immediately.

10.2 It shall be unlawful for any person to fail or refuse to comply with any Emergency Order issued pursuant to this Section 10.

10.3 In the event that such emergency Order is not immediately complied with, the Board may, without further notice to the owner, occupant, or agent of the owner, provide through County forces, contract, or otherwise, to remove, correct or otherwise abate the condition giving rise to the issuance of the emergency Order, and to assess and collect the reasonable cost thereof and any penalties in accordance with Section 9.

Section 11. Administrative Entry & Seizure Warrant.

11.1 No entry upon private property for the purpose of rubbish removal shall be made until and until an administrative entry and seizure warrant has been issued by a county or district court having jurisdiction over the property from which the rubbish shall be removed, in accordance with section 30-15-401(1)(a)(I), C.R.S., as amended.

11.2 A sworn or affirmed affidavit shall be prepared and submitted, along with supporting documents or pictures to the court. Said documents shall include a copy of this Ordinance, a copy of the Notice and Order issued to the owner, a copy of the signed return receipt of the certified mail or other proof of service, and a copy of the Board's decision directing the removal of the rubbish. Said affidavit shall establish the factual basis for the issuance of a warrant, including evidence that the property owner has received notice of the violation and has failed to remove the rubbish within a reasonable prescribed period of time, a reasonably specific description of the location of the property, a general list of any rubbish to be removed from the property, and the proposed disposal or temporary impoundment of such rubbish, whichever the court deems appropriate.

11.3 Within ten (10) days following the date of issuance of an administrative entry and seizure warrant, the warrant shall be executed in accordance with the directions of the issuing court. A copy of the issued warrant shall be provided or mailed to the owner and proof of execution, including a written inventory of any property impounded, shall be submitted to the issuing court.

Section 12. Impoundment.

12.1 Ordinarily, any material or equipment having salvage or reuse value should be removed to an impound lot, either owned by the County or privately owned and subject to a contract with the County.

12.2 Impoundment of removed rubbish may occur at any time so ordered by the Board or by the county or district court.

12.3 Upon impoundment, notice shall be sent by U.S. mail, postage prepaid, to the owner with information as to the impoundment location, the person to contact for reclaiming the property, and the conditions and time limits for retrieving impounded items as provided in Subsection 13.4.

12.4 Impoundment shall be for a period not to exceed ninety (90) days. Any items retained in impound after ninety (90) days shall be regarded as abandoned and may be disposed of by the County as it sees fit. If the owner of the impounded items seeks to reclaim them within the ninety (90) day period, the impounded items shall be released upon the occurrence of all the following:

(a) All of the impounded items owned by the owner are removed from the impound lot;

(b) Satisfactory evidence is provided that the owner will move the items to a site that will not result in a violation of this Ordinance or the Elbert County Zoning Regulations;

(c) The County has verified that the property from which the impounded items were removed has remained in compliance with this Ordinance; and

(d) All costs and penalties assessable under this Ordinance have been paid in full.

Section 13. Enforcement.

13.1 The Board hereby designates the County Attorney, or his/her designee, as the County's legal representative in the civil enforcement of the provisions of this Ordinance.

13.2 If so directed by the Board, a criminal prosecution may be brought against the owner in accordance with sections 16-2-201, 30-15-402 and 30-15-410, C.R.S., as amended. All prosecutions for all offenses under this ordinance shall be by the District Attorney according to the Colorado County Court Rules of Criminal Procedure.

13.3 Each day that such rubbish remains on the premises after the date of expiration of the twenty (20) day period prescribed in Section 7 for removal or abatement shall constitute a separate violation.

13.4 Violation of the provisions of this Ordinance shall be punishable by a fine of not more than six-hundred dollars (\$600.00) for each violation.

13.5 All fines paid for the violation of this ordinance shall be in negotiable funds made payable to Elbert County and submitted to the Elbert County Treasurer's Office. All fines for the violation of this ordinance received by the County shall be remitted to the Elbert County Treasurer and deposited into the general fund of Elbert County. All surcharges collected shall be paid to the Clerk of the Court and subsequently credited to the Victims and Witnesses Assistance

and Law Enforcement Fund of the Eighteenth Judicial District of the State of Colorado pursuant to section 30-15-402(2), C.R.S., as amended.

13.6 The remedies provided in this ordinance shall be cumulative and in addition to any other federal, state or local remedy, criminal or civil, which may be available. Nothing contained herein shall be construed to preclude prosecution under any other applicable statute, including, but not limited to, prosecution under section 18-13-109, C.R.S., or any other applicable statute, ordinance, rule, order or regulation.

Section 14. Severability.

14.1 If any section, subsection, clause, sentence or phrase of this ordinance are for any reason adjudged by any court of competent jurisdiction to be invalid, such invalidity shall not affect, impair or invalidate any other provisions of this ordinance which can be given effect without such invalid provision. The Board hereby declares that it would have passed this ordinance and each part or parts thereof, irrespective of the fact that anyone part or parts be declared invalid.

Section 15. Conflicting Provisions.

15.1 Where any provision of this Ordinance conflicts with any other provision of this Ordinance, or any other law or Ordinance, the more stringent shall apply.

Section 16. Interpretation.

16.1 This ordinance shall be so interpreted and construed as to effectuate its general purpose to reduce and regulate the accumulation of rubbish, nuisances, and junked and inoperable motor vehicles in Elbert County.

Section 17. Effective date.

17.1 This ordinance shall be effective immediately and shall remain in effect until such time as this ordinance is amended, temporarily suspended or repealed.

Section 18. Emergency.

18.1 The Board hereby finds, determines and declares that this ordinance is necessary for the immediate preservation and protection of the health, safety and welfare of the citizens of Elbert County, Colorado. This ordinance shall take effect immediately upon adoption on second and final reading.

Section 19. Certification:

19.1 The Elbert County Clerk and Recorder shall certify to the passage of this ordinance and make not less than three copies of the adopted ordinance available for inspection by the public during regular business hours.

INTRODUCED, READ AND ADOPTED ON FIRST READING, on the ____ day
of _____, 2011, and ordered published in full in the Ranchland News.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: _____
DEL SCHWAB, CHAIRMAN

ATTEST:

BY: _____
**DIANA HARTSOUGH
ELBERT COUNTY CLERK AND RECORDER**

ADOPTED ON SECOND AND FINAL READING, AS AMENDED, on the ____
day of _____, 2011, and ordered published in its entirety in the Elbert County News.

**THE BOARD OF COMMISSIONERS
OF THE COUNTY OF ELBERT, COLORADO**

BY: _____
DEL SCHWAB, CHAIRMAN

ATTEST:

BY: _____
**DIANA HARTSOUGH
ELBERT COUNTY CLERK AND RECORDER**

CERTIFICATE

I hereby certify that the foregoing Ordinance No. 11-01 was introduced, read and adopted on first reading as an ordinance necessary for the immediate preservation of the public health, safety and welfare at the regular meeting of the Board of County Commissioners of the County of Elbert on the _____ day of _____, 2011, and the same was published in full in the Ranchland News, a newspaper of general circulation published in Elbert County, on the _____ day of _____, 2011, and thereafter was adopted on second and final reading, as amended, at a public hearing of the Board of County Commissioners of the County of Elbert on the _____ day of _____, 2011. Said ordinance was published in its entirety in the Elbert County News on the _____ day of _____, 2011.

ATTEST:

BY: _____
DIANA HARTSOUGH
ELBERT COUNTY CLERK AND RECORDER

State of Colorado)
) ss.
County of Elbert)

Subscribed and sworn to before me this _____ day of _____, 2011 by Diana Hartsough as the Elbert County Clerk and Recorder.

My Commission Expires

Notary Public